

**Remarks/Arguments:**

Claims 1-23 are pending in the application. Claims 6, 8, 9, 14, 15, and 21-23 have been withdrawn as being drawn to a nonelected specie. Reconsideration of the pending claims is respectfully requested in view of the following remarks.

**Objections**

The amendment filed on May 20, 2004 is objected to under 35 U.S.C. § 112 as introducing new matter. Such objection is strenuously traversed for the following reasons:

First, the Examiner asserts that Figures 3, 4, and 6 display new matter, saying that "the shape and dimensions of the bowl are new matter." Applicant respectfully traverses such objection since no specific shape and dimension are claimed. Further, no specific shape and dimension is in fact shown in these figures. It is clearly stated on page 3 of the application at lines 15-16 that "The figures are not to scale, and are not intended to serve as engineering drawings."

Figures 3, and 4 are amended to better illustrate, in a three dimensional representation, a shallow container that has some depth such as, for example and not by way of any limitation, a bowl. Such amendment does not constitute introduction of new matter. As stated in page 3, line 12, "The invention will next be illustrated with reference to the figures wherein the same numbers indicate the same elements in all figures." Element 12, wherever it appears, represents the same element. Element 12 is the article whose appearance has been modified by the amendment to the figures. This element is identified in page 5 as follows: "The shallow container 12 may be any commonly used dinner article designed for receiving food, and may for example be a saucer, a dish, a bowl, or a plate..." (Emphasis added.) The amended figure simply represents an artist's conception of a shallow container which may be a bowl, as disclosed in the specification. Applicant is permitted to amend his drawings and or add figures, provided that such amendment or additional figure is described in the specification as filed.

Newly added figure 6 is an elevation view of an embodiment of the shallow dish 12 shown in figure 5 which illustrates the disclosure in page 7 lines 8-9, which reads "Likeness 20 extends laterally from the edge so that part of the likeness is bellow lower surface 15...". Again full support for the addition of figure 6 is provided in the specification, and the new figure 6 does not introduce new matter.

The Examiner's objection to Figure 5, namely that the location of the phrase "Don't Pig Out" on the dish is new matter, is also traversed. The applicant does not understand the basis for making such an objection, since it is clearly stated in the specification on page 5 at lines 17-18 that "...the position of diet reminder 22 can be anywhere on upper surface 14," and Figure 5 shows the phrase in exactly such a location. Thus, there is clear support for the amendment, and the objection should be withdrawn.

Therefore figures 3-6 do not display new matter, and such objection to this amendment should be withdrawn.

Second, the Examiner objects to the drawings under 37 CFR 1.83(a), stating that the drawings must show every feature of the invention specified in the claims. Specifically, claims 2, 9, 14, 15, 21, and 23 are objected to "because the various features of these claims as discussed above are not shown in a drawing." Regarding claims 9, 14, 15, 21, and 23, all of the objections are moot, since all of these claims have been withdrawn. Should the Applicant choose to prosecute such claims in a subsequent application, and should the same objection be raised, applicant reserves the right to traverse such objection as needed. Regarding the objection as applied to claim 2, the Examiner argues that "the bowl as stated in claim 2" is "not shown in a drawing." This objection is traversed. As the Examiner himself states in the third paragraph on page 2 of the Office Action, "Figures 3, 4, and 6 show a bowl..." and that "...there is support for a bowl."

Finally, in figure 7, the "...likeness 20 of a creature is a three dimensional figure, for example a statuette or a raised relief figure." (specification page 5 lines 7-8) is represented by a plain rectangle. Since element 20 has been clearly identified in the specification as any one of an infinite number of possible statuettes that connote obesity, the addition of a figure with a generic (i.e. blank square) statuette is completely within applicant's right as an illustration of the text in the second paragraph of page 5 beginning with the words "The likeness 20..."

For the aforementioned reasons, Applicant respectfully requests that the objection to the amendment filed May 24, 2004 be withdrawn, and the amendment entered as submitted.

#### Rejections under 35 U.S.C. § 102(b)

The Examiner reiterates the rejection of claims 1-5, 7, and 12 under 35 U.S.C. § 102(b) over Buj (4,863,033).

The Examiner states that Buj discloses a dinnerware article (plate and eating utensils) adapted to receive food comprising a shallow container (plate or dish), a raised likeness of a creature (statuette of dolphin) affixed to the upper surface and a graphical diet reminder on the upper surface (spoon 3 and fork 6).

Applicant traverses such interpretation of the Buj disclosure. Buj does not disclose a graphical diet reminder. Buj discloses a plate on which there is mounted a removable spoon and a fork. Buj's objective is to provide toy-like implements to encourage children to eat, an objective that teaches away from the present invention.

In the May 20, 2004 response to this rejection, the applicant explained that the spoon and fork in Buj are not graphical diet reminders, as recited in the present claims, but actual eating implements. As stated in the May 20, 2004 response, the American Heritage Dictionary of the English Language, New College Edition (Houghton Mifflin, 1976) defines "graphical" (alternative form of "graphic") as "of or pertaining to written or pictorial representation." The Examiner's statement that "the spoon and fork are pictorial and represent a spoon and fork." is improper. The spoon and fork shown in the Buj patent document must of course be represented therein in pictorial format, since the patent is a printed document. However, the invention of Buj does not include a picture or other graphical image of a spoon or fork, but rather an actual spoon or fork. See in particular column 2 at lines 57-66, where Buj explicitly states that "A spoon 3, provided with a standard end having a structural concavity and size suited to its practical function, includes on an end or empty edge of its handle 4 another toy or ornamental figure identical to or complementary with the already existing figures on plate 1. In

addition, a similar structure is established for the fork 6, whose prongs 6' are able to adopt any suitable shape limited such that this utensil can still perform its function and whose handle 7 ends with a toy 8." [emphasis added]

And further, in column 3 at lines 31-33, Buj explains that "...with little effort, he or she can use the utensils as if they were the toys they represent, taking the food from the plate and bringing it to his/her mouth."

Therefore the limitation "a graphical diet reminder at the upper surface" is not present in Buj and Buj fails to anticipate claim 1 and any of the dependent claims 2-5, 7 and 10-12.

The Examiner argues that, "Insofar as the spoon and fork have a size and the capability to hold a specified quantity and are not capable of holding more than a certain quantity, they represent diet reminders of a similar nature as the food pyramid which is based upon serving sizes and they prompt the user to consume a proper quantity and balance of food." The Examiner apparently does in fact recognize that the spoon and fork shown in Buj are actual working utensils and not graphical diet reminders.

Regardless of the specific nature of the utensils illustrated in Buj, applicant still traverses the Examiner's argument that the size of a spoon acts as a reminder to consume a proper quantity and balance of food. First, as stated earlier, patent drawings are not to scale, so the apparent size of the spoon illustrated in Buj is of no significance, and therefore cannot be used as prior art, absent any indication to the contrary in the Buj specification. Second, as is generally known, the amount of food consumed depends largely upon the number of spoonfuls consumed; two individuals at the same table, using the same size spoon, may consume very different quantities of food. Thus, the size of the spoon is not a reminder to consume a proper quantity of food. Neither does the size or shape of the spoon suggest a proper balance of foods, as argued by the Examiner. As is well known, a spoon is a general purpose utensil designed for use with many types of foods. Therefore not only does Buj not anticipate the claims of the present invention, but neither does his disclosure render the present invention obvious. If anything, Buj as stated above teaches away from the present invention by virtue of providing a method to encourage eating rather than reduce it.

#### Rejections of claims 16-20 under 35 U.S.C. § 103(a)

Claims 16-20 are all claims dependent either directly or indirectly from claim 1 and as such should also be allowed.

In addition:

1. Claim 16 is rejected under § 103(a) as unpatentable over Buj. As noted immediately above, Buj does not disclose all of the limitations of claim 1. No other references are cited, teaching a graphical diet reminder as recited in claim 16, and thus a *prima facie* case of obviousness has not been presented and the rejection should be withdrawn.
2. Claims 17 and 18 are rejected under § 103(a) as unpatentable over Buj in view of Gruneisen. Gruneisen teaches a drink container (not a shallow container as recited in claims 17 and 18) with an item resembling a basketball mounted on the lip thereof. The likeness is not

that of a creature, as recited in claims 17 and 18, nor does the likeness comprise a bottom and a removable top, as recited in claim 18. Although the design patent to Gruneisen shows a hollow basketball in which the top hemisphere has been "removed for ease of illustration", there is no indication that it can be removed in fact, and thus no indication that it is adapted to contain a pill, as recited in the claims. Further, Gruneisen does not disclose or suggest a graphical diet reminder. For each of these several reasons, not all of the elements of claims 17 and 18 are provided by the combination of Buj and Gruneisen. A *prima facie* case of obviousness has not been presented, and the rejections should be withdrawn.

3. Claims 13, 19, and 20 are rejected under § 103(a) as unpatentable over Buj in view of Brownwell. The Office action states that Buj discloses the invention except for a graphical diet reminder on the central section (claim 13), and except for the graphical diet reminder indicating a breakdown of diet according to food categories (claim 19), and comprising an image of a food pyramid (claim 20). All of these arguments rely upon the presence of a graphical diet reminder, as recited in the claims, but Brownwell nowhere discloses or suggests a graphical diet reminder.

The Examiner asserts that "Brownell pictorially represents a food pyramid, the exact same diet reminder that applicant uses." The design claimed by Brownell is clearly not a pictorial representation, and it is certainly not the exact same feature used in the instant claims, as a cursory inspection of the Figures and the specification will immediately reveal. Rather, Brownell discloses a solid object with recesses for receiving food, and the fact that the patent represents the object pictorially does not make the claimed design a graphical representation as recited in the instant claims.

It is not even clear from the disclosure of Brownwell that the "compartmentalized plate" serves, or is intended to serve, the function of any kind of diet reminder, graphical or otherwise. Nor has the Examiner explained how it may function as such. No function is ascribed to the pyramidal shape, and no teaching is given as to the function of the individual compartments beyond their conventional use in such items, i.e. to separate foods from one another. Further, regarding claim 19, Brownwell shows no diagram indicating a breakdown of diet according to food categories as recited in the claim, nor even any teaching regarding whether foods of different categories are to be placed in the various compartments. The applicant does not understand the relevance of the Examiner's comment that "the claims [of the present invention] do not recite any limitations about different foods being placed in various compartments. No such limitations are needed, since there are no claims and there is no disclosure in the present invention regarding food compartments at all. The invention has nothing to do with food compartments, and it is therefore self-evident that the claims should not recite placing different foods in different compartments.

4. Regarding claim 20, although there is a pyramidal shape to the arrangement of food compartments, the compartments do not constitute a food pyramid, which assigns specific locations on the pyramid to specific food groups, representing proper proportions of each for a healthy diet. The combination of Buj and Brownwell does not provide all of the elements of claims 13, 19, and 20. Therefore a *prima facie* case of obviousness has not been presented, and the rejections should be withdrawn.

5. Claims 1, 10, 13, 19 and 20 are rejected under § 103(a) as unpatentable over Brownwell in view of Buj and Gruneisen. The Office Action states that Brownwell discloses the invention except for the removably affixed hollow statuette of a pig and the removable top of the

statuette. The Applicant respectfully disagrees that Brownwell discloses the invention except for the indicated features since, as elaborated above, neither Brownwell nor any of the references discloses a graphical diet reminder as recited in claims 1, 10, 13, 19, and 20. The Applicant also respectfully disagrees with the assertion that Gruneisen teaches a hollow removable statuette with a removable top; no removable top is in fact disclosed or suggested in the removable basketball feature of Gruneisen, nor in fact in either Buj or Brownwell. Thus the combination of Brownwell, Buj, and Gruneisen does not provide all of the elements of claims 1, 10, 13, 19, and 20, and a *prima facie* case of obviousness has not been presented. The rejections should therefore be withdrawn.

For all of the numerous reasons set forth above, the Applicant feels compelled to appeal to the Examiner to reconsider the objections and rejections in the Office Action, and to allow claims 1-5, 7, 10-13, and 16-20. The Examiner is invited to contact either of the Applicant's representatives, named below, if it is judged that a telephone interview may expedite the prosecution of this application.

Respectfully submitted,



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Attachments:

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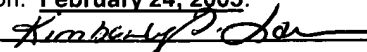
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